

JUDGMENT EVADING FOREIGN STATES ACCOUNTABILITY ACT OF 2011

MARKUP
BEFORE THE
SUBCOMMITTEE ON
THE WESTERN HEMISPHERE
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
SECOND SESSION
ON
H.R. 1798
NOVEMBER 29, 2012
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JUDGMENT EVADING FOREIGN STATES ACCOUNTABILITY ACT OF 2011

THURSDAY, NOVEMBER 29, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE WESTERN HEMISPHERE,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:06 p.m., in room 2172, Rayburn House Office Building, Hon. Connie Mack (chairman of the subcommittee) presiding.

Mr. MACK. The subcommittee will come to order.

Pursuant to notice, for purposes of a markup I call up H.R. 1798, the Judgment Evading Foreign States Accountability Act. Without objection, the measure is considered read and open for amendment at any point.

[H.R. 1798 follows:]

112TH CONGRESS
1ST SESSION

H. R. 1798

To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2011

Mr. MACK (for himself, Mr. KING of New York, Ms. LORETTA SANCHEZ of California, Mr. CARNAHAN, and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Judgment Evading
5 Foreign States Accountability Act of 2011”.

6 **SEC. 2. STATEMENT OF PURPOSE.**

7 The purpose of this Act is to prevent foreign states
8 that do business, issue securities, or borrow money in the
9 United States, and then fail to satisfy United States court
10 judgments totaling \$100,000,000 or more based on such
11 activities, from inflicting further economic injuries in the
12 United States, from undermining the integrity of United
13 States courts, and from discouraging responsible lending
14 to poor and developing nations by undermining the sec-
15 ondary and primary markets for sovereign debt.

16 **SEC. 3. FINDINGS.**

17 Congress finds the following:

18 (1) Foreign states that do business, issue secu-
19 rities, or borrow money in the United States, and
20 then refuse to satisfy judgments of United States
21 courts entered against them in connection with dis-
22 putes resulting from these or other commercial ac-
23 tivities, directly or indirectly inflict billions of dollars
24 of damage in the United States, and undermine the
25 credibility of the United States courts.

1 (2) Foreign states that engage in such behavior
2 can infect the management of corporations and
3 other entities that they own or control with their
4 profligate and irresponsible habits. When negligent
5 ethical standards permit government officials to re-
6 pudiate lawful judgments, the injury to United
7 States taxpayers is multiplied.

8 (3) The Republic of Argentina is a primary ex-
9 ample of a foreign state that has incurred large
10 debts in the United States, defaulted on those debts,
11 and then refused to honor lawful judgments of
12 United States and other courts ordering repayment.
13 In 2001, Argentina defaulted on more than
14 \$81,000,000,000 in sovereign debt, the largest such
15 default in history. In 2005, after refusing all efforts
16 by creditors to negotiate the terms of an exchange
17 offer, Argentina unilaterally offered lenders approxi-
18 mately 27 cents on the dollar in its restructuring
19 deal, far below the international norm for sovereign
20 debt restructurings. Argentina repudiated the debts
21 owed to the unprecedented proportion of bondholders
22 who rejected that offer.

23 (4) Argentina still owes United States bond
24 holders more than \$3,500,000,000. Overall, the de-
25 fault and restructuring by Argentina have cost

1 United States bondholders, taxpayers, and share
2 holders more than \$10,000,000,000.

3 (5) Argentina has the capacity to pay its exter-
4 nal creditors. Argentina now holds more than
5 \$54,000,000,000 in reserves. Argentina chose to pay
6 off its \$9,800,000,000 debt to the International
7 Monetary Fund in full in 2005, years before it was
8 due, and has similarly announced an intention to
9 pay sovereign creditors of the Paris Club, of which
10 the United States is owed \$360,000,000.

11 (6) United States bondholders have won numer-
12 ous court rulings against Argentina relating to Ar-
13 gentina's default on debt owed to such bondholders
14 and Argentina's decision to repeatedly ignore these
15 judgments threatens the United States legal system.
16 Despite having agreed to submit to the jurisdiction
17 of the State of New York and to waive claims of sov-
18 ereign immunity, Argentina is now contesting at
19 least 170 lawsuits and refusing to honor 100 judg-
20 ments against it, totaling more than
21 \$7,000,000,000.

22 (7) Argentina has demonstrated a similar dis-
23 regard for claims brought by United States investors
24 before the International Centre for Settlement of In-
25 vestment Disputes (ICSID), a tribunal of the World

1 Bank. Argentina is the respondent in more ICSID
2 cases than any other nation, now accounting for
3 more than a quarter of the tribunal's caseload. It is
4 important to note that Argentina's arguments for
5 nonpayment have been outright rejected by both the
6 Department of State and the ICSID. Argentina is
7 currently receiving \$5,810,000,000 from the World
8 Bank and has requested an additional
9 \$1,630,000,000 in funding. Argentina has behaved
10 in a manner that undermines the viability of the
11 ICSID process, thereby alarming the worldwide in-
12 vestments of United States businesses that rely upon
13 this forum for adjudication of disputes.

14 (8) Argentina's debts are legitimate. Any asser-
15 tion that the Argentine debt now outstanding was
16 incurred by the repressive, nondemocratic regimes
17 that ruled Argentina in the late 1970s and early
18 1980s is inaccurate. The bonds currently held by
19 United States creditors were not incurred by non-
20 democratic regimes; rather, they were issued by
21 democratically elected Argentine governments.

22 (9) While it is true that the Argentine military
23 junta—which caused tremendous suffering during a
24 tyrannical 7-year reign—borrowed from foreign
25 banks, 96 percent of that debt was refinanced in

1 1993 when Argentina's "Brady Plan" restructuring
2 was completed. That restructuring was underwritten
3 by the United States Government. Prior to the
4 Brady Plan restructuring, Argentina had undergone
5 two "major restructurings" of its foreign debt—the
6 first in 1985, and the second in 1987.

7 (10) None of the debt now held by United
8 States creditors dates from the days of the Argen-
9 tine military junta. Further, even if it were fair to
10 characterize the debt issued in the 1993 Brady Plan
11 restructuring as somehow derivative of junta-era
12 debt—a notion that maligns the United States pol-
13 icymakers who approved and underwrote the Brady
14 Plan on behalf of the American people—only five
15 percent of the defaulted debt now held by United
16 States creditors was issued during or before 1993.
17 Ninety-five percent of the defaulted debt held by
18 United States creditors was incurred after 1993 by
19 freely elected Argentine governmental officials and
20 has no relationship to the military junta.

21 (11) Argentina's defaults have raised the costs
22 of borrowing for both the public and private sectors.
23 If the country took action to remediate its debts, its
24 annual interest expense would certainly decline. Ar-
25 gentina's defaults have discouraged foreign direct in-

1 vestment. One study from 2007 states that Argen-
2 tina loses over \$6,000,000,000 in foreign direct in-
3 vestment every year as a result of its default and
4 debt repudiation and the resultant risk profile.

5 (12) An October 2010 evaluation report by the
6 Financial Action Task Force (FATF), an intergov-
7 ernmental body that analyzes financial systems for
8 criminal activity, gave Argentina the most negative
9 evaluation of any G-20 nation. FATF evaluated Ar-
10 gentina on 49 financial standards, of which Argen-
11 tina failed to meet 47 out of the 49 standards. Ar-
12 gentina was given an original timeline of three
13 months, then an additional ten months to dem-
14 onstrate compliance to the standards or face being
15 blacklisted due to financial corruption and defi-
16 ciencies in combating financing of terrorism (CFT)
17 and anti-money laundering (AML) systems.

18 (13) Drawing further conclusions, FATF re-
19 ported several shortcomings in Argentina's financial
20 sector, most notably corruption and the poor en-
21 forcement of Argentine financial laws. The lack of
22 enforcement has prompted wide-spread money laun-
23 dering in Argentina's financial sector creating an en-
24 vironment that puts Argentina at risk of becoming

1 a hub for terrorism and drug trafficking in the
2 Western Hemisphere.

3 (14) Many persons in the United States are un-
4 aware of Argentina's irresponsible behavior and dis-
5 regard for the rule of law. Further, United States
6 citizens continue to invest in, lend to, and do busi-
7 ness with Argentina and are unfamiliar with the as-
8 sociated risks.

9 (15) Those who are injured as a result of this
10 conduct often have little or no recourse. Judgment
11 evading foreign states and their state owned cor-
12 porations enjoy a safe haven within their national
13 borders, and this fact often presents an insurmount-
14 able obstacle to recovery for those who are injured
15 by the behavior of those states.

16 (16) The absence of a remedy for defaults by
17 such foreign states undermines nations that badly
18 need to access capital from foreign lenders, with dis-
19 proportionate harm falling on responsible and demo-
20 cratic nations. By undermining confidence in the
21 secondary market for sovereign debt, judgment evad-
22 ing foreign states significantly increase the risk that
23 primary lending to less-advantaged nations will be
24 curtailed, depriving deserving sovereign borrowers of
25 access to the international capital markets.

1 (17) Action by the United States Government
2 to combat this growing problem must include meas-
3 ures that both protect against the irresponsible con-
4 duct of judgment evading foreign states and their
5 state owned corporations, and motivate such states
6 and corporations to raise their standards of behav-
7 ior.

8 (18) An effective means of achieving this impor-
9 tant objective is to deprive judgment evading foreign
10 states and their state owned corporations of the
11 privilege of issuing securities or borrowing in the
12 United States, and requiring that warnings of their
13 irresponsible behavior be given to persons in the
14 United States who are contemplating investing in,
15 lending to, or doing business with such states and
16 businesses, until those states demonstrate that such
17 measures are no longer necessary.

18 **SEC. 4. DEFINITIONS.**

19 For purposes of this Act:

20 (1) AGENCY OR INSTRUMENTALITY OF A FOR-
21 EIGN STATE.—The term “agency or instrumentality
22 of a foreign state” has the meaning given that term
23 in section 1603(b) of title 28, United States Code.

24 (2) FINAL JUDGMENT.—The term “final judg-
25 ment” means any judgment of a United States dis-

1 trict court, the Court of International Trade, or the
2 court of any State, that is no longer eligible to be
3 appealed to any court in the United States.

4 (3) FOREIGN STATE.—The term “foreign state”
5 has the meaning given that term in section 1603(a)
6 of title 28, United States Code, except that it does
7 not include an agency or instrumentality of a foreign
8 state.

9 (4) INTERNATIONAL ORGANIZATION.—The term
10 “international organization” means an entity des-
11 ignated by the President as being entitled to enjoy
12 the privileges, exemptions, and immunities provided
13 by the International Organizations Immunities Act
14 (22 U.S.C. 288 et seq.).

15 (5) JUDGMENT EVADING FOREIGN STATE.—
16 The term “judgment evading foreign state” means
17 any foreign state that—

18 (A) has one or more judgments entered
19 against it by any United States district court,
20 the Court of International Trade, or the court
21 of any State, the combined amount of which
22 judgments exceeds \$100,000,000;

23 (B) fails to satisfy in full any such judg-
24 ment for a period of more than two years after
25 the judgment becomes a final judgment, regard-

1 less of whether such judgment became a final
2 judgment before the date of the enactment of
3 this Act; and

4 (C) is not a foreign state eligible for—

5 (i) financing through the Inter-
6 national Development Association but not
7 from the International Bank for Recon-
8 struction and Development; and

9 (ii) debt relief under the Enhanced
10 HIPC Initiative (as defined in section
11 1625(e)(3) of the International Financial
12 Institutions Act) or under the Multilateral
13 Debt Relief Initiative.

14 (6) STATE OWNED CORPORATION OF A JUDG-
15 MENT EVADING FOREIGN STATE.—The term “state
16 owned corporation of a judgment evading foreign
17 state” means any corporation or entity, other than
18 a natural person—

19 (A) that is an agency or instrumentality of
20 a foreign state that is a judgment evading for-
21 eign state; or

22 (B) a majority of the shares or other own-
23 ership interest of which is held, either directly
24 or indirectly, by a judgment evading foreign
25 state or by an agency or instrumentality of a

1 foreign state that is a judgment evading foreign
2 state.

3 (7) STATE.—The term “State” means each of
4 the several States, the District of Columbia, and any
5 commonwealth, territory, or possession of the United
6 States.

7 **SEC. 5. STATEMENT OF POLICY.**

8 It shall be the policy of the United States—

9 (1) to advocate within the governing bodies of
10 international organizations, international financial
11 institutions such as the World Bank and the Inter-
12 national Monetary Fund, and other foreign policy
13 settings for the full compensation and fair treatment
14 of United States taxpayers in whose favor judgments
15 have been awarded by the United States courts;

16 (2) to seek to protect the economic interests of
17 such taxpayers and other persons and of nations
18 that benefit from a reliable flow of foreign capital
19 by—

20 (A) restricting the access to the United
21 States capital markets of judgment evading for-
22 eign states and their state owned corporations;

23 (B) requiring that such persons be warned
24 of the dangers of investing in, lending to, or

1 doing business with such states and state owned
2 corporations; and

3 (C) call on the World Bank, the Inter-
4 national Monetary Fund, and other inter-
5 national financial institutions to vote against
6 providing funding or foreign capital to judg-
7 ment evading foreign states; and

8 (3) to further solidify the authority of the
9 United States courts by preventing judgment evad-
10 ing foreign states from willfully disregarding the
11 judgments of those courts.

12 **SEC. 6. BAR ON ACCESS TO UNITED STATES LENDERS AND**
13 **INVESTORS.**

14 (a) MEASURES WITH RESPECT TO JUDGMENT EVAD-
15 ING FOREIGN STATES.—The Securities and Exchange
16 Commission shall—

17 (1) take all necessary measures to deny every
18 judgment evading foreign state access to United
19 States capital markets, including the ability, directly
20 or indirectly, to borrow money or sell securities in
21 the United States; and

22 (2) require that all periodic filings made by the
23 judgment evading foreign state with the Securities
24 and Exchange Commission under the securities laws
25 bear the following legend prominently on the cover

1 page: "WARNING: THIS REPORT IS SUB-
2 MITTED BY A FOREIGN STATE THAT HAS
3 BEEN DETERMINED BY THE UNITED
4 STATES DEPARTMENT OF THE TREASURY
5 TO BE A JUDGMENT EVADING FOREIGN
6 STATE BASED UPON ITS FAILURE TO SAT-
7 ISFY OUTSTANDING UNITED STATES
8 COURT JUDGMENTS."

9 (b) MEASURES WITH RESPECT TO STATE OWNED
10 CORPORATIONS OF JUDGMENT EVADING FOREIGN
11 STATES.—If any judgment evading foreign state remains
12 in default on any final judgment for more than three
13 years, irrespective of whether such judgment became final
14 before the date of the enactment of this Act, the Securities
15 and Exchange Commission shall—

16 (1) take all necessary measures to deny any
17 state owned corporation of a judgment evading for-
18 eign state access to the United States capital mar-
19 kets, including the ability to issue debt, equity or
20 other securities, or borrow money, unless the pro-
21 ceeds of such borrowing of securities issuance are to
22 be used, in the first instance, to satisfy in full all
23 final judgment against its parent judgment evading
24 foreign state; and

1 (2) require that all periodic filings made by
2 each state owned corporation of a judgment evading
3 foreign state with the Securities and Exchange Com-
4 mission under the securities laws bear the following
5 legend prominently on the cover page: “WARNING:
6 THIS REPORT IS SUBMITTED BY A STATE
7 OWNED CORPORATION OF A FOREIGN
8 STATE THAT HAS BEEN DETERMINED BY
9 THE DEPARTMENT OF THE TREASURY TO
10 BE A JUDGMENT EVADING FOREIGN STATE
11 BASED UPON ITS FAILURE TO SATISFY
12 OUTSTANDING UNITED STATES COURT
13 JUDGMENTS.”.

14 **SEC. 7. REQUESTS FOR AID OR ASSISTANCE FROM JUDG-**
15 **MENT EVADING FOREIGN STATES.**

16 (a) **BILATERAL ASSISTANCE.**—Whenever any pro-
17 posal is made to a department, agency, or other instru-
18 mentality of the United States Government to extend aid,
19 a loan, or any other form of assistance to a judgment
20 evading foreign state, the head of the department, agency,
21 or other instrumentality may consider the proposal only
22 if it bears prominently the legend described in subsection
23 (c).

24 (b) **MULTILATERAL ASSISTANCE.**—Whenever any
25 proposal is made to an international organization to ex-

1 tend aid, a loan, or any other form of assistance to a judg-
2 ment evading foreign state, the Secretary of State shall
3 provide prompt notice of such proposal to the Congress.
4 Such notice shall bear prominently the legend described
5 in subsection (c).

6 (c) LEGEND DESCRIBED.—The legend of a proposal
7 referred to in subsection (a) and the legend of a notice
8 referred to in subsection (b) is the following: “REQUEST
9 FOR GRANT-IN-AID OR LOAN BY A JUDGMENT
10 EVADING FOREIGN STATE.”.

11 **SEC. 8. REPORTS; RECOMMENDATIONS OF ADDITIONAL**
12 **MEASURES.**

13 (a) ANNUAL REPORTS TO CONGRESS.—Not later
14 than January 31 of each year, the Secretary of the Treas-
15 ury shall provide a report, in writing, to the Congress
16 identifying each judgment evading foreign state, and, for
17 each such judgment evading foreign state—

18 (1) quantifying the impact on the United States
19 economy, and cost to United States taxpayers, of the
20 unsatisfied final judgments outstanding against the
21 judgment evading foreign state; and

22 (2) describing all measures that the Secretary
23 of the Treasury and the Securities and Exchange
24 Commission have taken in the preceding year to
25 carry out this Act.

1 (b) CONSIDERATION OF DOCUMENTS AND OTHER IN-
2 FORMATION.—The Secretary of the Treasury may con-
3 sider documents and other information received from third
4 parties and from judgment evading foreign states in pre-
5 paring each report under subsection (a).

6 (c) TERMINATION OF DESIGNATION.—At such time
7 as the Secretary of the Treasury determines that any
8 judgment evading foreign state no longer qualifies as a
9 judgment evading foreign state, the Secretary shall so cer-
10 tify to the Congress no later than in the next annual re-
11 port to Congress under subsection (a), at which time the
12 requirements and prohibitions under this Act shall no
13 longer apply to such former judgment evading foreign
14 state, or to any state owned corporation of such judgment
15 avoiding foreign state. The Secretary may consider docu-
16 ments and other information received from third parties
17 and from the judgment evading foreign state in making
18 this determination.

19 (d) OTHER PUBLIC REPORTS TO INCLUDE INFORMA-
20 TION ABOUT JUDGMENT EVADING FOREIGN STATES.—
21 The Secretary of State, the Secretary of the Treasury, and
22 the Secretary of Commerce shall each reference the find-
23 ings of the Secretary of the Treasury from the Secretary's
24 most recent annual report to Congress under subsection
25 (a) relating to the unsatisfied final judgments outstanding

1 against the judgment evading foreign state in every report
2 prepared for the public relating to the country risk or in-
3 vestment climate of such judgment evading foreign state.

4 (c) ADDITIONAL MEASURES.—The Secretary of the
5 Treasury shall recommend to the Congress in writing ad-
6 ditional measures to carry out the purposes of this Act.



Mr. MACK. Before recognizing myself and other members for statements, I have an amendment in the nature of a substitute that was shared with your offices yesterday, which includes updates and a few minor edits.

The clerk will report the amendment.

Mr. GATELY. Amendment in the nature of a substitute to H.R. 1798, offered by Mr. Mack of Florida.

Strike all after the enacting clause——

Mr. MACK. Without objection, the amendment in the nature of a substitute is considered read.

[The amendment in the nature of a substitute follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1798
OFFERED BY MR. MACK OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Judgment Evading
3 Foreign States Accountability Act of 2012”.

4 SEC. 2. STATEMENT OF PURPOSE.

5 The purpose of this Act is to prevent foreign states
6 that do business, issue securities, or borrow money in the
7 United States, and then fail to satisfy United States court
8 judgments totaling \$100,000,000 or more based on such
9 activities, from inflicting further economic injuries in the
10 United States, from undermining the integrity of United
11 States courts, and from discouraging responsible lending
12 to poor and developing nations by undermining the sec-
13 ondary and primary markets for sovereign debt.

14 SEC. 3. FINDINGS.

15 Congress finds the following:

16 (1) Foreign states that do business, issue secu-
17 rities, or borrow money in the United States, and
18 then refuse to satisfy judgments of United States

1 courts entered against them in connection with dis-
2 putes resulting from these or other commercial ac-
3 tivities, directly or indirectly inflict billions of dollars
4 of damage in the United States, and undermine the
5 credibility of the United States courts.

6 (2) Foreign states that engage in such behavior
7 can infect the management of corporations and
8 other entities that they own or control with their
9 profligate and irresponsible habits. When negligent
10 ethical standards permit government officials to re-
11 pudiate lawful judgments, the injury to United
12 States taxpayers is multiplied.

13 (3) The Republic of Argentina is a primary ex-
14 ample of a foreign state that has incurred large
15 debts in the United States, defaulted on those debts,
16 and then refused to honor lawful judgments of
17 United States and other courts ordering repayment.
18 In 2001, Argentina defaulted on more than
19 \$81,000,000,000 in sovereign debt, the largest such
20 default in history. In 2005, after refusing all efforts
21 by creditors to negotiate the terms of an exchange
22 offer, Argentina unilaterally offered lenders approxi-
23 mately 27 cents on the dollar in its restructuring
24 deal, far below the international norm for sovereign
25 debt restructurings. Argentina repudiated the debts

1 owed to the unprecedented proportion of bondholders
2 who rejected that offer.

3 (4) Argentina still owes United States bond
4 holders more than \$3,500,000,000. Overall, the de-
5 fault and restructuring by Argentina have cost
6 United States bondholders, taxpayers, and share
7 holders more than \$10,000,000,000.

8 (5) Argentina has the capacity to pay its exter-
9 nal creditors. Argentina now holds more than
10 \$45,000,000,000 in reserves. Argentina chose to pay
11 off its \$9,800,000,000 debt to the International
12 Monetary Fund in full in 2005, years before it was
13 due, and has similarly announced an intention to
14 pay sovereign creditors of the Paris Club, of which
15 the United States is owed \$360,000,000.

16 (6) United States bondholders have won numer-
17 ous court rulings against Argentina relating to Ar-
18 gentina's default on debt owed to such bondholders
19 and Argentina's decision to repeatedly ignore these
20 judgments threatens the United States legal system.
21 Despite having agreed to submit to the jurisdiction
22 of the State of New York and to waive claims of sov-
23 ereign immunity, Argentina contested at least 151
24 lawsuits and has refused to honor 116 judgments
25 against it, totaling more than \$6,000,000,000.

1 (7) Argentina has demonstrated a similar dis-
2 regard for arbitral awards granted to United States
3 investors by the International Centre for Settlement
4 of Investment Disputes (ICSID), a tribunal of the
5 World Bank. Although Argentina was allocated
6 \$3,300,000,000 for its 2010-2012 Country Strategy
7 Partnership, and currently has \$5,500,000,000 in
8 loans and credits outstanding from the World Bank,
9 Argentina has consistently defied the decisions of
10 this World Bank tribunal. Argentina is the respond-
11 ent in more ICSID cases than any other G-20 na-
12 tion, accounting for more than 66 percent of such
13 cases. It is important to note that Argentina's argu-
14 ments for nonpayment of ICSID awards have been
15 outright rejected by both the Department of State
16 and the ICSID. Argentina's behavior undermines the
17 viability of the ICSID process, thereby harming the
18 foreign investments of United States businesses that
19 rely upon this forum for adjudication of disputes.

20 (8) Argentina's debts are legitimate. Although
21 Argentine government officials have asserted that
22 the Argentine debt now outstanding was incurred by
23 the repressive, nondemocratic regimes that ruled Ar-
24 gentina in the late 1970s and early 1980s, this is in-
25 accurate. All the bonds currently held by United

1 States creditors were issued by democratically elect-
2 ed Argentine governments, starting in 1993.

3 (9) Argentina's defaults have raised the costs of
4 borrowing for both the public and private sectors. If
5 the country took action to remediate its debts, its
6 annual interest expense would certainly decline. Ar-
7 gentina's defaults have discouraged foreign direct in-
8 vestment. One study from 2007 states that Argen-
9 tina loses over \$6,000,000,000 in foreign direct in-
10 vestment every year as a result of its default and
11 debt repudiation and the resultant risk profile.

12 (10) An October 2010 evaluation report by the
13 Financial Action Task Force (FATF), an intergov-
14 ernmental body that sets standards for safeguarding
15 the international financial system from money-laun-
16 dering and terrorist financing, gave Argentina the
17 most negative evaluation of any G-20 nation. FATF
18 evaluated Argentina on 49 financial standards, and
19 Argentina failed to fully comply with 47 of these. As
20 of October 2012, Argentina is still included in
21 FATF's list of "High-risk and non-cooperative juris-
22 dictions" because of strategic deficiencies in its anti-
23 money laundering and anti-terrorist financing re-
24 gime.

1 (11) Many persons in the United States are un-
2 aware of Argentina's irresponsible behavior and dis-
3 regard for the rule of law. Further, United States
4 citizens continue to invest in, lend to, and do busi-
5 ness with Argentina and are unfamiliar with the as-
6 sociated risks.

7 (12) Those who are injured as a result of this
8 conduct often have little or no recourse. Judgment
9 evading foreign states and their state owned cor-
10 porations enjoy a safe haven within their national
11 borders, and this fact often presents an insurmount-
12 able obstacle to recovery for those who are injured
13 by the behavior of those states.

14 (13) The absence of a remedy for defaults by
15 such foreign states undermines nations that badly
16 need to access capital from foreign lenders, with dis-
17 proportionate harm falling on responsible and demo-
18 cratic nations. By undermining confidence in the
19 secondary market for sovereign debt, judgment evad-
20 ing foreign states significantly increase the risk that
21 primary lending to less-advantaged nations will be
22 curtailed, depriving deserving sovereign borrowers of
23 access to the international capital markets.

24 (14) Action by the United States Government
25 to combat this growing problem must include meas-

1 ures that both protect against the irresponsible con-
2 duct of judgment evading foreign states and their
3 state owned corporations, and motivate such states
4 and corporations to raise their standards of behav-
5 ior.

6 (15) An effective means of achieving this impor-
7 tant objective is to deprive judgment evading foreign
8 states and their state owned corporations of the
9 privilege of issuing securities or borrowing in the
10 United States, and requiring that warnings of their
11 irresponsible behavior be given to persons in the
12 United States who are contemplating investing in,
13 lending to, or doing business with such states and
14 businesses, until those states demonstrate that such
15 measures are no longer necessary.

16 **SEC. 4. DEFINITIONS.**

17 For purposes of this Act:

18 (1) AGENCY OR INSTRUMENTALITY OF A FOR-
19 EIGN STATE.—The term “agency or instrumentality
20 of a foreign state” has the meaning given that term
21 in section 1603(b) of title 28, United States Code.

22 (2) FINAL JUDGMENT.—The term “final judg-
23 ment” means any judgment of a United States dis-
24 trict court, the Court of International Trade, or the

1 court of any State, that is no longer eligible to be
2 appealed to any court in the United States.

3 (3) FOREIGN STATE.—The term “foreign state”
4 has the meaning given that term in section 1603(a)
5 of title 28, United States Code, except that it does
6 not include an agency or instrumentality of a foreign
7 state.

8 (4) INTERNATIONAL ORGANIZATION.—The term
9 “international organization” means an entity des-
10 ignated by the President as being entitled to enjoy
11 the privileges, exemptions, and immunities provided
12 by the International Organizations Immunities Act
13 (22 U.S.C. 288 et seq.).

14 (5) JUDGMENT EVADING FOREIGN STATE.—
15 The term “judgment evading foreign state” means
16 any foreign state that—

17 (A) has one or more judgments entered
18 against it by any United States district court,
19 the Court of International Trade, or the court
20 of any State, the combined amount of which
21 judgments exceeds \$100,000,000;

22 (B) fails to satisfy in full any such judg-
23 ment for a period of more than two years after
24 the judgment becomes a final judgment, regard-
25 less of whether such judgment became a final

1 judgment before the date of the enactment of
2 this Act; and

3 (C) is not a foreign state eligible for—

4 (i) financing through the Inter-
5 national Development Association but not
6 from the International Bank for Recon-
7 struction and Development; and

8 (ii) debt relief under the Enhanced
9 HIPC Initiative (as defined in section
10 1625(e)(3) of the International Financial
11 Institutions Act) or under the Multilateral
12 Debt Relief Initiative.

13 (6) STATE OWNED CORPORATION OF A JUDG-
14 MENT EVADING FOREIGN STATE.—The term “state
15 owned corporation of a judgment evading foreign
16 state” means any corporation or entity, other than
17 a natural person—

18 (A) that is an agency or instrumentality of
19 a foreign state that is a judgment evading for-
20 eign state; or

21 (B) a majority of the shares or other own-
22 ership interest of which is held, either directly
23 or indirectly, by a judgment evading foreign
24 state or by an agency or instrumentality of a

1 foreign state that is a judgment evading foreign
2 state.

3 (7) STATE.—The term “State” means each of
4 the several States, the District of Columbia, and any
5 commonwealth, territory, or possession of the United
6 States.

7 **SEC. 5. STATEMENT OF POLICY.**

8 It shall be the policy of the United States—

9 (1) to advocate within the governing bodies of
10 international organizations, international financial
11 institutions such as the World Bank and the Inter-
12 national Monetary Fund, and other foreign policy
13 settings for the full compensation and fair treatment
14 of United States taxpayers in whose favor judgments
15 have been awarded by the United States courts;

16 (2) to seek to protect the economic interests of
17 such taxpayers and other persons and of nations
18 that benefit from a reliable flow of foreign capital
19 by—

20 (A) restricting the access to the United
21 States capital markets of judgment evading for-
22 eign states and their state owned corporations;

23 (B) requiring that such persons be warned
24 of the dangers of investing in, lending to, or

1 doing business with such states and state owned
2 corporations; and

3 (C) call on the World Bank, the Inter-
4 national Monetary Fund, and other inter-
5 national financial institutions to vote against
6 providing funding or foreign capital to judg-
7 ment evading foreign states; and

8 (3) to further solidify the authority of the
9 United States courts by preventing judgment evad-
10 ing foreign states from willfully disregarding the
11 judgments of those courts.

12 **SEC. 6. BAR ON ACCESS TO UNITED STATES LENDERS AND**
13 **INVESTORS.**

14 (a) MEASURES WITH RESPECT TO JUDGMENT EVAD-
15 ING FOREIGN STATES.—The Securities and Exchange
16 Commission shall—

17 (1) take all necessary measures to deny every
18 judgment evading foreign state access to United
19 States capital markets, including the ability, directly
20 or indirectly, to borrow money or sell securities in
21 the United States; and

22 (2) require that all periodic filings made by the
23 judgment evading foreign state with the Securities
24 and Exchange Commission under the securities laws
25 bear the following legend prominently on the cover

1 page: “WARNING: THIS REPORT IS SUB-
2 MITTED BY A FOREIGN STATE THAT HAS
3 BEEN DETERMINED BY THE UNITED
4 STATES DEPARTMENT OF THE TREASURY
5 TO BE A JUDGMENT EVADING FOREIGN
6 STATE BASED UPON ITS FAILURE TO SAT-
7 ISFY OUTSTANDING UNITED STATES
8 COURT JUDGMENTS.”.

9 (b) MEASURES WITH RESPECT TO STATE OWNED
10 CORPORATIONS OF JUDGMENT EVADING FOREIGN
11 STATES.—If any judgment evading foreign state remains
12 in default on any final judgment for more than three
13 years, irrespective of whether such judgment became final
14 before the date of the enactment of this Act, the Securities
15 and Exchange Commission shall—

16 (1) take all necessary measures to deny any
17 state owned corporation of a judgment evading for-
18 eign state access to the United States capital mar-
19 kets, including the ability to issue debt, equity or
20 other securities, or borrow money, unless the pro-
21 ceeds of such borrowing of securities issuance are to
22 be used, in the first instance, to satisfy in full all
23 final judgment against its parent judgment evading
24 foreign state; and

1 (2) require that all periodic filings made by
2 each state owned corporation of a judgment evading
3 foreign state with the Securities and Exchange Com-
4 mission under the securities laws bear the following
5 legend prominently on the cover page: “WARNING:
6 THIS REPORT IS SUBMITTED BY A STATE
7 OWNED CORPORATION OF A FOREIGN
8 STATE THAT HAS BEEN DETERMINED BY
9 THE DEPARTMENT OF THE TREASURY TO
10 BE A JUDGMENT EVADING FOREIGN STATE
11 BASED UPON ITS FAILURE TO SATISFY
12 OUTSTANDING UNITED STATES COURT
13 JUDGMENTS.”.

14 **SEC. 7. REQUESTS FOR AID OR ASSISTANCE FROM JUDG-**
15 **MENT EVADING FOREIGN STATES.**

16 (a) **BILATERAL ASSISTANCE.**—Whenever any pro-
17 posal is made to a department, agency, or other instru-
18 mentality of the United States Government to extend aid,
19 a loan, or any other form of assistance to a judgment
20 evading foreign state, the head of the department, agency,
21 or other instrumentality may consider the proposal only
22 if it bears prominently the legend described in subsection
23 (c).

24 (b) **MULTILATERAL ASSISTANCE.**—Whenever any
25 proposal is made to an international organization to ex-

1 tend aid, a loan, or any other form of assistance to a judg-
2 ment evading foreign state, the Secretary of State shall
3 provide prompt notice of such proposal to the Congress.
4 Such notice shall bear prominently the legend described
5 in subsection (c).

6 (c) LEGEND DESCRIBED.—The legend of a proposal
7 referred to in subsection (a) and the legend of a notice
8 referred to in subsection (b) is the following: “REQUEST
9 FOR GRANT-IN-AID OR LOAN BY A JUDGMENT
10 EVADING FOREIGN STATE.”.

11 **SEC. 8. REPORTS; RECOMMENDATIONS OF ADDITIONAL**
12 **MEASURES.**

13 (a) ANNUAL REPORTS TO CONGRESS.—Not later
14 than January 31 of each year, the Secretary of the Treas-
15 ury shall provide a report, in writing, to the Congress
16 identifying each judgment evading foreign state, and, for
17 each such judgment evading foreign state—

18 (1) quantifying the impact on the United States
19 economy, and cost to United States taxpayers, of the
20 unsatisfied final judgments outstanding against the
21 judgment evading foreign state; and

22 (2) describing all measures that the Secretary
23 of the Treasury and the Securities and Exchange
24 Commission have taken in the preceding year to
25 carry out this Act.

1 (b) CONSIDERATION OF DOCUMENTS AND OTHER IN-
2 FORMATION.—The Secretary of the Treasury may con-
3 sider documents and other information received from third
4 parties and from judgment evading foreign states in pre-
5 paring each report under subsection (a).

6 (c) TERMINATION OF DESIGNATION.—At such time
7 as the Secretary of the Treasury determines that any
8 judgment evading foreign state no longer qualifies as a
9 judgment evading foreign state, the Secretary shall so cer-
10 tify to the Congress no later than in the next annual re-
11 port to Congress under subsection (a), at which time the
12 requirements and prohibitions under this Act shall no
13 longer apply to such former judgment evading foreign
14 state, or to any state owned corporation of such judgment
15 avoiding foreign state. The Secretary may consider docu-
16 ments and other information received from third parties
17 and from the judgment evading foreign state in making
18 this determination.

19 (d) OTHER PUBLIC REPORTS TO INCLUDE INFORMA-
20 TION ABOUT JUDGMENT EVADING FOREIGN STATES.—
21 The Secretary of State, the Secretary of the Treasury, and
22 the Secretary of Commerce shall each reference the find-
23 ings of the Secretary of the Treasury from the Secretary's
24 most recent annual report to Congress under subsection
25 (a) relating to the unsatisfied final judgments outstanding

1 against the judgment evading foreign state in every report
2 prepared for the public relating to the country risk or in-
3 vestment climate of such judgment evading foreign state.

4 (c) ADDITIONAL MEASURES.—The Secretary of the
5 Treasury shall recommend to the Congress in writing ad-
6 ditional measures to carry out the purposes of this Act.



Mr. MACK. All members are given leave to insert remarks on this measure into the record should they choose to do so.

I now recognize myself to speak on the bill and the amendment.

The Judgment Evading Foreign States Accountability Act draws our attention to a serious problem that requires our immediate attention. The Republic of Argentina has incurred substantial debt in the United States and has subsequently defaulted on those debts. Going back more than a decade, in 2001, Argentina defaulted on more than \$81 billion in sovereign debt. In 2005, Argentina refused to negotiate with creditors and unilaterally offered creditors 27 cents on the dollar.

Despite having agreed to submit to the jurisdictions of U.S. courts, specifically the State of New York, and waive claims of sovereign immunity, Argentina has contested at least 151 lawsuits and has refused to honor 116 court judgments against it, totaling more than \$6 billion.

Additionally, Argentina has demonstrated a similar disregard for arbitral awards granted to the United States investors by the International Centre for Settlement of Investment Disputes, a tribunal of the World Bank. Currently, Argentina is the respondent in more of these cases than any other G-20 nation, accounting for more than 66 percent of such cases.

Argentina's arguments for nonpayment have been outright rejected by both the World Bank and the U.S. State Department. Argentina's behavior undermines the viability of the World Bank's arbitration process, thereby harming the worldwide investments of U.S. businesses that rely upon this forum for adjudication purposes.

The Obama administration has taken some action against Argentina, such as suspending Generalized System of Preferences benefits, as well as voting against new loans to Argentina through the World Bank and the Inter-American Development Bank. However, the Obama administration has not gone far enough to protect United States businesses and investors.

Many people in the United States are unaware of Argentina's irresponsible behavior and blatant disregard for the rule of law. U.S. citizens continue to invest in, lend to, and do business with Argentina and are unfamiliar with the associated risks. Those who are injured as a result of this conduct often have little or no recourse.

H.R. 1798, the Judgment Evading Foreign States Accountability Act, takes bold steps to protect U.S. businesses and investors. This bill denies Argentina and other foreign states that have been in default of U.S. court judgments exceeding \$100 million for more than 2 years access to U.S. capital markets, as well as requires the U.S. Government to consider the default status of countries prior to granting them aid.

I urge all of my colleagues to work with me to ensure the passage of the Judgment Evading Foreign States Accountability Act.

I now recognize the ranking member for his remarks.

Mr. ENGEL. Thank you very much, Mr. Chairman.

Before I turn to today's markup, I want to tell you what a pleasure it has been to work with you on this subcommittee. We have had an excellent working relationship and, I would dare say, an excellent friendship.

Regardless of whether it was when I chaired the subcommittee and you were the ranking member or when you chaired and I have been the ranking member, we worked very well together. I have appreciated your friendship, your good humor, your cooperation, and that of your wife, our colleague, as well. And I wish you and your wife the best of luck in the days ahead.

Mr. MACK. Thank you. Thank you very much.

Mr. ENGEL. Turning to today's markup, I think we must first note that Argentina is a very important country with which the United States has and will continue to have a multifaceted relationship. It is a member of the G-20 and a key nation in South America. It has vast resources and a large and educated population. I have enjoyed my visits to Argentina and continue to believe that it is a natural friend of the United States.

However, today's markup deals with holders of several billion dollars worth of Argentine debt who have remained unpaid since Argentina defaulted on roughly \$100 billion of sovereign debt. While the vast majority of these bondholders accepted a restructuring of the debt, substantially reducing what they were owed, a small minority have held out, rejecting those deals.

Mr. Chairman, I understand your concern about this matter, as it is very serious. However, I think that today's markup is not the appropriate course of action at this sensitive time, and let me say why.

First, we haven't had hearings about Argentina on the debt issue. We are not first in line in terms of jurisdiction; that falls to the Committee on Financial Services. I don't make light of this. As you have pointed out, this is a serious matter, but also a very complicated matter. And I don't believe that rushing into a markup of legislation which may have unforeseen implications, especially ahead of Financial Services Committee consideration, is the step we should be taking now.

I understand that even if we report this bill favorably today, the full committee will not take it up, and even if, hypothetically, the full committee did approve the bill, neither the House nor the Senate would have time to consider it. Therefore, I don't think today's markup will achieve the intended goal.

And, finally, this matter is in the Federal court system right now. Late last month, the U.S. Court of Appeals for the Second Circuit upheld a lower court ruling that Argentina had to pay \$1.33 billion to the holdout investors. However, only yesterday, the U.S. Court of Appeals for the Second Circuit granted an emergency stay on its order, giving Argentina more time to respond to the ruling. Given the action in our courts, this is precisely, I think, the wrong time to be marking up H.R. 1798. It will be seen as interfering in the judicial process, something I think we should avoid at this moment.

Therefore, I will respectfully vote no on H.R. 1798 today but will continue to monitor this issue closely in the days and weeks ahead. I certainly agree with you, Mr. Chairman, that this is an important issue and one that we need not take lightly and must not take lightly. I just don't think that today is the right time to do it.

So let me just conclude again the way I started, Mr. Chairman. It has been a pleasure serving with you on this subcommittee. You

are not only my colleague but you are my friend. And I hope that we will continue to work together in the future on many, many different things. And I wish you only the best in the future.

I yield back the balance of my time.

Mr. MACK. Thank you very much.

I would like to thank the ranking member for your comments, and I feel the same way. We have had a wonderful relationship. We have worked together very well. We have not always agreed, but we have always worked together to do what was best, as we saw it, for the hemisphere. And I value your friendship, and I appreciate your kind words today. So thank you very much.

Are there any other members who wish to strike the last word and speak briefly on the measure?

Mr. MCCAUL. Mr. Chairman, I would like to strike the last word.

Mr. MACK. The gentleman is recognized.

Mr. MCCAUL. First, I think this bill is an important step toward holding countries accountable for their financial obligations under U.S. law.

I recently went down to Argentina, among other countries, and we met with several officials down there. And I was struck by what I see as a growing anti-American trend down there. I certainly hope Argentina will go back to being a friendly country and not being the antagonist that it looks like it is appearing to go down that road.

Having said that, I just, on a personal point of personal privilege, Mr. Chairman, it has been not only a great honor serving on this committee with you, we came into Congress together at the same time, and I considered you to be one of my dearest friends up here in the Congress, along with your lovely wife. And we are going to miss you a lot.

And, with that, I yield back.

Mr. MACK. I thank the gentleman.

And, again, thank you for your kind words. And our days aren't over. We are going to continue to do a lot of great things together. And I appreciate those kind words.

Do any other members wish to be recognized?

Mr. SIREN. Yes.

Mr. MACK. The gentleman is recognized.

Mr. SIREN. Well, thank you for having this hearing today. And I also want to express my thanks to you for working together the last few years. It certainly has been my pleasure, and I certainly enjoyed our trip to Panama, although the timing wasn't—all the things that happened, but it was certainly an enjoyable trip.

And I thank you for all your support on an issue that is very important to me and my community. You have been a strong supporter, and I thank you for that.

And I will be supporting this bill today.

Mr. MACK. Thank you.

And thank you for always being willing to work with us and with me. You are a friend, and I look forward to continue to see your work done here on this committee. So thank you.

Anyone else?

The gentleman is recognized.

Mr. RIVERA. Thank you, Chairman. Thank you for having this important hearing and for always showing leadership on issues that sometimes are difficult to tackle, as I have noticed during my tenure on this committee.

And I will be supporting the bill, as well. But as someone who has worked with you and with your family for many years—as you know, I started working with your father in Congress in 1988 and 1989 and served with you in the Florida legislature. And it was an honor and privilege and a pleasure to always serve with you in the Florida House of Representatives and my time here in Congress with you, showing that leadership on so many issues that are important, particularly to promoting freedom, freedom around the world, to those that are not as fortunate, as many are here in the United States, to live in the greatest and freest country the world has ever known.

So thank you for always being a standard bearer for freedom, whether it be in Cuba, Latin America, all over the world. You have been a staunch advocate, and you are to be commended for that. Thank you for your service.

Mr. MACK. Thank you very much, David. Thank you.

Hearing no further amendments, the question is on agreeing to the amendment in the nature of a substitute.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes have it, and the amendment in the nature of a substitute is agreed to.

The question now occurs on adopting the bill as amended.

All in favor, say aye.

All those opposed, say no.

In the opinion of the Chair, the ayes have it, and the amended bill is agreed to.

Without objection, H.R. 1798, as amended, is reported favorably to the full Committee on Foreign Affairs. And staff are directed to make any technical and conforming changes.

This concludes our business. And I would just like to say before we adjourn that it has been a privilege, an honor to serve with the members of this committee. And I think that we have done great work on this committee, whether it is when you were the chairman, and I think that we have done some great work, as well, over the last couple years.

I see real opportunity for Latin America and the United States in how we work together and for the future of all of the people in all of our countries. And I will continue to watch and pay attention and be involved in issues that are related to Latin America and freedom. And I just want to thank my colleagues for everything that you have done for the people of the United States and people of Latin America.

And, without objection, the subcommittee stands adjourned.

[Whereupon, at 2:20 p.m., the subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

MARKUP NOTICE
SUBCOMMITTEE ON THE WESTERN HEMISPHERE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

Connie Mack (R-FL), Chairman

November 20, 2012

You are respectfully requested to attend an OPEN meeting of the Committee on Foreign Affairs, Subcommittee on the Western Hemisphere, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at <http://www.hcfa.house.gov>)**:

DATE: Thursday, November 29, 2012

TIME: 2:00 p.m.

MARKUP OF: H.R. 1798, To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.



COMMITTEE ON FOREIGN AFFAIRS
MINUTES OF SUBCOMMITTEE MARKUP

MINUTES OF SUBCOMMITTEE ON the Western Hemisphere MARKUP

Day Thursday Date 11/29/12 Room 2172

Starting Time 2:06 p.m. Ending Time 2:20 p.m.

Recesses ☐ (to) (to) (to) (to) (to) (to)

Presiding Member(s)

Rep. Connie Mack

Check all of the following that apply:

Open Session ☒

Electronically Recorded (taped) ☒

Executive (closed) Session ☐

Stenographic Record ☒

Televised ☒

BILLS FOR MARKUP: (Include bill number(s) and title(s) of legislation.)

H.R. 1798, To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

COMMITTEE MEMBERS PRESENT:

Reps. Mack, McCaul, Rivera, Engel, and Sires

NON-COMMITTEE MEMBERS PRESENT:

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

Rep. Mack

ACTIONS TAKEN DURING THE MARKUP: (Attach copies of legislation and amendments.)

The Chair called up the bill for consideration by the Subcommittee.

An amendment in the nature of a substitute, previously provided to Members of the Subcommittee, was offered by Chairman Mack (Mark 067), which was adopted by voice vote.

H.R. 1798, as amended, was agreed to by voice vote and was ordered favorably reported to the Full Committee by unanimous consent.

RECORDED VOTES TAKEN (FOR MARKUP): (Attach final vote tally sheet listing each member.)

Subject	Yeas	Nays	Present	Not Voting
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TIME SCHEDULED TO RECONVENE _____

or

TIME ADJOURNED 2:20 p.m.


 Subcommittee Staff Director

Subcommittee on the Western Hemisphere**Member Attendance**

- ☒ Connie Mack, R-FL, Chairman
- ☒ Michael T. McCaul, R-TX
- ☐ Jean Schmidt, R-OH
- ☒ David Rivera, R-FL
- ☐ Christopher H. Smith, R-NJ
- ☐ Elton Gallegly, R-CA
- ☒ Eliot L. Engel, D-NY, Ranking Member
- ☒ Albio Sires, D-NJ
- ☐ Eni F. H. Faleomavaega, D-AS
- ☐ Gregory W. Meeks, D-NY

**Opening Statement
Chairman Connie Mack
Western Hemisphere Subcommittee
Markup of H.R. 1798
November 29, 2012**

H.R. 1798, To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

The Judgment Evading Foreign States Accountability Act draws our attention to a serious problem that requires our immediate attention.

The Republic of Argentina has incurred substantial debt in the United States and has subsequently defaulted on those debts.

Going back more than a decade, in 2001, Argentina defaulted on more than \$81 billion in sovereign debt. In 2005, Argentina refused to negotiate with creditors and unilaterally offered creditors 27 cents on the dollar.

Despite having agreed to submit to the jurisdiction of U.S. courts, specifically the State of New York, and waive claims of sovereign immunity, Argentina has contested at least 151 lawsuits and has refused to honor 116 court judgments against it, totaling more than \$6 billion dollars.

Additionally, Argentina has demonstrated a similar disregard for arbitral awards granted to United States investors by the International Centre for Settlement and Investor Disputes (ICSID), a tribunal of the World Bank.

Currently Argentina is the respondent in more ICSID cases than any other G-20 nation, accounting for more than 66% of such cases.

Argentina's arguments for nonpayment have been outright rejected by both the World Bank and the U.S. State Department.

Argentina's behavior undermines the viability of the World Bank's arbitration process, thereby harming the worldwide investments of U.S. businesses that rely upon this forum for adjudication purposes.

The Obama Administration has taken some action against Argentina, such as suspending Generalized System of Preferences (GSP) benefits as well as voting against new loans to Argentina through the World Bank and the Inter-American Development Bank.

However, the Obama Administration has not gone far enough to protect United States businesses and investors.

Many people in the United States are unaware of Argentina's irresponsible behavior and blatant disregard for the rule of law. U.S. citizens continue to invest in, lend to, and do business with Argentina and are unfamiliar with the associated risks. Those who are injured as a result of this conduct often have little or no recourse.

H.R. 1798, the Judgment Evading Foreign States Accountability Act, takes bold steps to protect U.S. businesses and investors.

This bill denies Argentina and other foreign states that have been in default of U.S. court judgments exceeding \$100 million dollars for more than two years access to U.S. capital markets, as well as requires the U.S. Government to consider the default status of countries prior to granting them aid.

I urge all of my colleagues to work with me to ensure the passage of the Judgment Evading Foreign States Accountability Act.

